

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

MIKE JABARY,

Plaintiff,

v.

CITY OF ALLEN, ET AL.,

Defendants.

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Case No. 4:10cv711
(Judge Clark/Judge Mazzant)

**MEMORANDUM ADOPTING REPORT AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On July 11, 2012, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that the Individual Defendants' Motion for Entry of Final Judgment of Dismissal [Doc. #109] be granted.

This court has received the report of the United States Magistrate Judge, the objections thereto filed by plaintiff [Doc. #116], as well as the individual defendants' response [Doc. #117]. Plaintiff objects to the report, asserting that Defendants "failed to identify any injustice, harm, or damage which would result from the delay of entry of a final order in this case." Plaintiff argues that Defendants have not described any harm or damages which would result from not certifying an immediate appeal and waiting until the case against the City of Allen was complete. Plaintiff also asserts that the Magistrate Judge encouraged Defendants to pursue a motion for entry of a final judgment.

Defendants assert that Plaintiff's position ignores the fact that Defendants clearly pointed out that they have established their immunity and that Plaintiff merely seeks to delay entry of a final judgment until after Plaintiff completes litigation of claims he made against the City of Allen in state and federal courts. Defendants assert that the exhaustion of Plaintiff's state court remedies against the City of Allen could take years. Defendants also assert that although Plaintiff disagrees with the Magistrate Judge's report, there has been no showing of any error.

Based upon the court's prior decisions, all claims against the Individual Defendants have been dismissed with prejudice. The court granted a stay to the claims against the City of Allen. The court sees no error committed by the Magistrate Judge in recommending finality to the Individual Defendants. This court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and adopts the Magistrate Judge's report as the findings and conclusions of the court.

It is, therefore, **ORDERED** that the Individual Defendants' Motion for Entry of Final Judgment of Dismissal [Doc. #109] is GRANTED. A Final Judgment will be entered as to Defendants Peter Smith, Stephen Terrell, Bo Bass, Jon Felty, Peter Vargas, Bret McCullough, William Rushing and John Does 1-5.

So **ORDERED** and **SIGNED** this **23** day of **August, 2012**.



Ron Clark, United States District Judge